

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 30 1995

Amendment to the Commission's)
Rules Regarding a Plan for) WT Docket No. 95-157
Sharing the Costs of Microwave) RM-8643
Relocation)

To: The Commission

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COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.¹

I. PRELIMINARY STATEMENT

1. ITA, formerly the Special Industrial Radio Service Association, Inc. (SIRSA), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. Before the recent freeze imposed on

¹ Notice of Proposed Rule Making (FCC 95-16), GN Docket No. 94-90, adopted August 2, 1994, released August 11, 1994, (hereinafter "Notice").

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the filing of applications for the 800 MHz General Category channels, ITA also coordinated channels from the General Category pool for those entities: (a) eligible to become Industrial/Land Transportation licensees; (b) wishing to expand trunked systems; or (c) consolidating conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 8,600 private land mobile radio communications licensees and the following trade associations:

Alliance of Motion Picture and Television Producers
American Mining Congress
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Aggregates Association
National Food Processors Association
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

II. BACKGROUND

3. In this proceeding, the Commission seeks comments and suggestions for refining the process established to facilitate the relocation of incumbent microwave licensees from the 1850-1990 MHz,

2110-2150 MHz and 2160-2200 MHz frequency bands to available frequencies in higher bands. This relocation process is designed to promote the implementation of broadband Personal Communications Services ("PCS").

III. COMMENTS

4. ITA concurs with the Commission's view that "the general approach to relocation in [the] existing rules is sound and equitable."² ITA also agrees that the public interest will be served by establishing a more formal structure for sharing the costs of the relocation effort among all PCS licensees who will directly benefit from the relocation of specific microwave links. In that spirit, ITA offers the following comments.

A. During the "Voluntary" Period, Negotiations Clearly Are Optional.

5. At the outset, ITA commends the Commission for refraining from any proposals that would significantly alter the voluntary negotiation period.³ ITA agrees with the Commission's view that, during the voluntary period, the full meaning of the term "voluntary" should be honored. The Commission has recognized, for example, that the requirement for microwave licensees to negotiate "in good faith" applies only during the involuntary negotiation

² Notice of Proposed Rule Making, paragraph 3.

³ The voluntary period is three years for public safety licensees and two years for all other entities licensed in the affected microwave bands.

period. In contrast, during the voluntary period, PCS licensees are free to offer the microwave incumbents a variety of incentives to expedite relocation."⁴

6. The Commission must preserve the basic dichotomy between the voluntary and involuntary periods. To impose a "good faith" negotiation requirement on affected microwave licensees during the voluntary period, as some parties urge, would effectively undermine the fundamental purpose of the voluntary period.

7. The Commission has clearly stated its intent regarding the duration and character of the voluntary period. Microwave licensees maintain co-primary status during the entire duration of the voluntary period. They may negotiate with PCS providers but are not required to do so. This is the essential nature of the term "voluntary."

8. ITA disagrees strenuously with those PCS proponents who have attempted to transform the character of the voluntary period. Contrary to the assertions of the Cellular Telecommunications Industry Association, for example, the "law" does not require good faith negotiations during the voluntary period.⁵ For non-public safety microwave incumbents licensed to operate in the A and B frequency blocks, the voluntary negotiation period extends until

⁴ Notice of Proposed Rule Making, paragraph 68.

⁵ See CTIA release dated September 19, 1995, "CTIA Calls on Federal Agencies To Shut Down 'Extortion' By Incumbents Involved in PCS Radio Frequency Relocation."

April 4, 1997. For public safety incumbents operating on frequencies in these two blocks, the voluntary period extends to April 4, 1998. The requirement to negotiate in good faith commences on those dates. There can be no other possible interpretation of the term "voluntary."

B. The PCS Relocation Procedures Are Precedent-Setting.

9. There are an abundance of compelling reasons for adhering to the established voluntary and involuntary relocation regime. First, the established structure is fair to all participants. It provides clear notice of incumbent rights and expectations. It also incorporates a sense of balance between the rights of incumbent licensees and PCS system operators. Second, the existing structure was carefully crafted through an extended rule making proceeding. There should be a finality to the process. Last, but not least, the relocation procedures adopted for the incumbent microwave licensees will inevitably exert a prominent precedent-setting role in other proceedings.

10. The microwave licensee relocation program developed to accommodate the development of Personal Communications Services is not unique. Relocation procedures will become increasingly important in the future, as the Commission and the industry grapple with the need to accommodate new developments in communications technologies. Invariably, the relocation procedures employed in the future will be patterned after the procedures developed for PCS.

11. If the Commission were to substantially restructure the incumbent microwave relocation rules, as CTIA favors, the ramifications will extend far beyond PCS. If the current relocation rules are rewritten in favor of PCS operators, either tacitly or explicitly, the ramifications will extend far beyond the 2 GHz band. A precedent will be established that will affect any relocation that may take place in the 800 MHz band as well as any other relocation efforts that may be necessary in the future.

12. Moreover, federal agencies will not be immune from the adverse precedents that might be established. As more and more attention is focused on efforts to introduce non-government use in the frequency bands now utilized by the federal government, federal agencies will feel the impact of adverse incumbent relocation procedures applied to 2 GHz incumbent licenses. For this reason and the other reasons mentioned above, ITA strongly urges the Commission to preserve the equitable balance that now exists between the rights of PCS operators and incumbent microwave licensees. It is imperative that the FCC adhere to its intent "not to reopen" the incumbent microwave reaccommodation proceeding.⁶

C. A Formal Structure for Sharing the Costs of Microwave Relocation Will Serve The Public Interest.

13. ITA supports the effort to design a realistic approach for equitably sharing the cost of relocating microwave systems.

⁶ Notice of Proposed Rule Making, paragraph 3.

ITA agrees that the formula implemented for sharing costs should be administratively feasible and straight-forward. The appeal of the formula that the Commission proposes in this proceeding lies in its precision. And, though it might be desirable to incorporate factors such as non-cash transactions, ITA agrees that the non-cash transactions element would be complex in its implementation.

14. Under the proposal, PCS licensees would be free to negotiate alternative cost-sharing terms. This alternative would provide an appropriate mechanism for reflecting cost elements that fall outside the formula. ITA is therefore supportive of allowing PCS licensees to have the flexibility to negotiate alternative arrangements.

15. ITA also supports the implementation of measures that will reasonably promote the relocation of entire systems operated by microwave licensees as opposed to individual links. Relocation of microwave stations on a system-wide basis is essential to provide stability for microwave licensees and prevent needless disruption to existing systems.

D. The Commission Must Open Up The Clearinghouse Function To Competitive Bidding.

16. It seems clear that the Commission will have to establish a neutral organization as a clearinghouse to maintain cost and payment records relating to the relocation process. The clearinghouse will also determine PCS licensees' cost-sharing

obligations and perform other vital functions. The Commission's proposal sets out some fundamental requirements for the clearinghouse entity. In addition to the requirements mentioned in the proposal, however, there are certainly other requirements and attributes that would be critical to the process.

17. ITA strongly urges the Commission to solicit proposals from all entities having an interest in serving as the clearinghouse. Opening up the clearinghouse function to competitive bidding would have several benefits. It would ensure that all competent entities would have an equal opportunity to fulfill this important function. It would also ensure that the function is performed without unnecessary expense. Additionally, it would provide an opportunity for interested organizations to propose special, and possibly innovative, procedures and safeguards that would promote the reimbursement process.

18. For instance, the Commission has noted UTC's concern that the clearinghouse function might jeopardize the confidentiality of strategic business information. If the Commission were to open up the clearinghouse function to competitive bidding, interested entities would have an opportunity to explain in detail the confidentiality procedures which they would observe. Interested bidders would therefore compete not only on the basis of the overall cost of the program but also on operational aspects of the clearinghouse function. Accordingly, ITA believes it is imperative that the Commission provide an opportunity for all interested

entities to compete for the right to serve as the clearinghouse.

IV. CONCLUSION

19. The Industrial Telecommunications Association urges the Commission to preserve the basic dichotomy between the voluntary and involuntary negotiation periods. Contrary to the assertions of some PCS proponents, there is no legal requirement for incumbent microwave licensees to negotiate during the voluntary period. ITA disagrees strenuously with those PCS proponents who have attempted to transform the character of the voluntary period in this regard.

20. The relocation procedures adopted for incumbent microwave licensees set a precedent that will be applied in future licensee reaccommodation proceedings, including proceedings that will govern the relocation of radio systems operated by the federal government. The Commission must ensure that the precedent fairly balances the rights and obligations of both those who inherit the spectrum and those who must relocate. The current 2 GHz incumbent relocation provisions accomplish this objective. The existing procedures must not be undermined.

21. ITA supports the effort to design a realistic approach for equitably sharing the cost of relocating microwave systems. ITA urges the Commission to implement a cost-sharing formula that is administratively feasible.

22. ITA also urges the Commission to open up the

clearinghouse function to competitive bidding from all interested entities. Opening up the clearinghouse function to competitive bidding would ensure that all competent entities have equal opportunity to fulfill this function. It would also ensure that the function is performed without unnecessary expense. Finally, it would provide an opportunity for interested organizations to develop meaningful, and possibly innovative, procedures that would best promote the reimbursement process.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

INDUSTRIAL TELECOMMUNICATIONS
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